

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 3

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 4, Article 28, Section 1704
of the Construction Safety Orders

Pneumatically-Driven Nailers and Staplers**SUMMARY**

This proposed rulemaking is the result of a petition (OSHSB Petition File No. 461) received June 8, 2004, from Mr. Jim Muskovich, Safety Consultant, regarding the use of the term “unattended” in Construction Safety Orders (CSO) Section 1704(b) which currently reads:

“When not in use, or *unattended*, all pneumatically driven nailers and staplers shall be disconnected from the air supply at the tool.”

The Petitioner contended that “unattended” can be misinterpreted to mean that it is a violation for an employee to set the tool down for even a few moments in order to procure additional supplies, such as lumber or roofing materials.

The use of pneumatically-driven nailers has increased in recent years and accidents involving their use have risen correspondingly. Although engineering safeguards, including triggering control sequences, are already commonly available in the marketplace, accident statistics tend to indicate that human error, haste, lack of training, and lack of adherence to safe work practices are contributing to the number of injuries using these tools.

Section 1704 was last modified in 1987 and much has changed in the industry since that time. Both the Division of Occupational Safety and Health (Division) and the Occupational Safety and Health Standards Board (Board) staff supported the petition and proposed a comprehensive overhaul of Section 1704. Concurrently the Division submitted a Form 9, Requests for New, or Change in Existing, Safety Orders, with suggested changes to the standard on August 30, 2004, supplemented on December 10, 2004.

On October 21, 2004, the Board granted the petition to the extent that an advisory committee be convened to review construction safety orders for pneumatically-driven nailers in light of current accident statistics, industry practices and technology. The consensus recommendations of the

advisory committee convened June 7, 2006, have been considered in the preparation of this rulemaking proposal.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Subsection 1704(a), Definitions.

The existing subsection prescribes that all pneumatically-driven nailers and staplers which operate at more than 100 psi pressure at the tool shall have a safety device to prevent accidental discharge unless the muzzle is in contact with the work surface. It is proposed to move this provision to subsection (b) in order to make room for certain definitions necessary for the proper application of proposed modifications to Section 1704; i.e., definitions for “light-duty nailers and staplers” and “mode of actuation.” The purpose and necessity of these proposed modifications is to clarify the proposed standard to assure proper application and enforcement.

Subsection 1704(b), General.

The existing subsection prescribes that all pneumatically-driven nailers and staplers shall be disconnected from the air supply at the tool when not in use or unattended. It is proposed to relocate this provision to subsection (c) in order to make room for the provisions of existing subsection (a) as follows:

Subsection (b)(1).

Existing subsection (a) is proposed to be relocated to new subsection (b)(1). Furthermore, the existing 100 psi threshold which established a requirement for a work piece contact device is proposed to be replaced with an exception for light-duty nailers and staplers. This change was recommended by the advisory committee as the 100 psi threshold, also contained in counterpart federal standards [29 CFR 1926.503(b)(3)], is obsolete. The 100 psi threshold is subject to manipulation; i.e., operators in the field can set their tools to operate just below the 100 psi threshold in order to avoid the requirement. The proposed exception uses the defined term “light-duty nailers and staplers” which cannot easily be manipulated through subterfuge. The purpose and necessity of this proposed modification is to improve worker safety by establishing clarifying applicability of this standard, consistent with current technology.

Subsection (b)(2).

This new subsection is proposed to prescribe that pneumatically-driven nailers and staplers shall be operated and maintained in accordance with the manufacturer’s operating and safety instructions. The purpose and necessity for this amendment is to establish criteria for the safe operation and maintenance of pneumatically-driven nailers and staplers.

Subsection (b)(3).

This new subsection is proposed to prescribe that personal protective equipment shall be utilized in accordance with CSO Section 1514. Although adherence to all applicable provisions of the

safety orders is implicit, the purpose and necessity for this cross-reference is to add emphasis to this important safety practice.

Subsection (b)(4).

This new subsection is proposed to prescribe that operating controls shall not be removed, tampered with, altered, or otherwise disabled. The purpose and necessity for this amendment is to prohibit the common practice of disabling factory installed safety devices in the field (altering and/or removing trigger and/or work piece springs) in order to increase production.

Subsection (b)(5).

This new subsection is proposed to prescribe that pneumatically-driven nailers and staplers shall be connected to the air supply with a safety disconnect to prevent the tool from becoming accidentally disconnected. The purpose and necessity of this amendment is to prevent or minimize hazards created if the tools were to become disconnected from its air supply (e.g. operator thrown off balance, hose whip, tool sliding out of control off roof) and to provide equivalency with counterpart federal standards [29 CFR 1926.302(b)(1)].

Subsection (b)(6).

This new subsection is proposed to prescribe that tools shall be equipped with a fitting that will discharge all compressed air in the tool at the time the fitting or hose coupling is disconnected. The purpose and necessity for this amendment is to ensure there will be no residual pressure to accidentally discharge the nailer or stapler once it is disconnected from its air source.

Subsection (c).

The existing subsection (c) prescribes that hoses exceeding 1/2-inch inside diameter shall have a safety device at the source of supply or branch line to reduce pressure in case of hose failure. It is proposed to relocate this provision to subsection (e) in order to accommodate amendments and reformatting of the foregoing sections.

Existing subsection (b) is proposed to be relocated to subsection (c) and modified to prescribe specific conditions under which the tool shall be disconnected from its air supply. They are: (1) when performing any maintenance or repair on the tool, (2) when clearing a jam, (3) whenever the operator leaves the working level where the tool is, or (4) whenever the worker is over 25 feet from or is out of sight of the tool. The purpose and necessity of these amendments is to eliminate the ambiguity that was the subject of the petition and to clarify specific tasks requiring complete de-energization of the tool.

Subsection (d).

Existing subsection (d) prescribed safety precautions, including fall protection based on roof pitch. The portion of the existing subsection that requires the operator to wear a safety belt with a lanyard when the tool is used on a roof of 1/3 pitch or steeper is proposed for deletion for the following reasons: (1) the existing requirement for the use of a safety belt conflicts with fall

protection requirements elsewhere in the safety orders (Articles 24 and 30), and (2) the 1/3 pitch fall protection trigger presently specified is inconsistent with fall protection triggers elsewhere in the safety orders. Furthermore, the existing fall protection requirements are based on pitch rather than slope. Pitch is not a term commonly used in the industry and creates confusion. The purpose and necessity for this deletion is to promote consistency by eliminating overlaps and conflicts with other parts of the safety orders.

The portion of the existing subsection that requires that on roofs of 1/4 pitch or steeper, the air hose shall be secured at roof level in such a manner as to provide ample, but not excessive, amounts of hose is also proposed for modification. It is proposed to replace the use of “pitch” with “slope” and to set the trigger at roofs sloped steeper than 7:12, which is consistent with other triggers for roofing [i.e. CSO 1716.2(g), and 1731(c)].

Subsection (e).

Existing subsection (c) is proposed to be relocated to new subsection (e) in order to accommodate amendments and reformatting of the foregoing sections as described above.

Subsection (f).

This new subsection is proposed to prescribe that the employer’s written Code of Safe Practices shall include provisions for training specific for the use of pneumatically-driven nailers and staplers where applicable. The purpose and necessity for this amendment is to emphasize that safety training for pneumatically-driven nailers and staplers should be included in the employer’s Code of Safe Practices when applicable to assure that workers using pneumatically-driven nailers and staplers are properly trained on their safe operation and maintenance.

Subsection (g).

This new subsection is proposed to prescribe training in addition to that required by CSO 1509 and GISO 3203(a)(7) before workers can use pneumatically driven nailers. This section also prescribes refresher remedial training, and the general content of the training, as well as a requirement that the training be conducted by a qualified person. The purpose and necessity of this amendment is to assure safe operation of pneumatic nailers by training workers in the hazards and by instructing them in the safe handling and operation of pneumatic nailers.

DOCUMENTS RELIED UPON

1. ANSI SNT-101-2002. “American National Standard for Power Tools – Portable, Compressed-Air-Actuated, Fastener Driving Tools.” Published by International Staple, Nail and Tool Association (ISANTA), 512 West Burlington Avenue, Suite 203, LaGrange, IL 60525-2245.

2. OSHSB Petition 461 Decision, adopted October 21, 2004.
3. OSHSB Petition 461, by Jim Muskovich, Safety Consultant, received June 14, 2004.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

DOCUMENTS INCORPORATED BY REFERENCE

None.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

The training costs associated with this proposal are negligible since employers are already required to conduct periodic training and toolbox or tailgate safety meetings as required by CSO 1509 and GISO 3203 (Injury and Illness Prevention Training Programs). The proposed training standards can easily be incorporated into those training elements. The advisory committee estimated that any training costs would be more than offset by anticipated savings derived from reduced workers compensation and liability insurance costs. Furthermore, the proposed standard does not impose unique requirements on state government. All employers - state, local and private - will be required to comply with the prescribed standards.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Additional costs that may be incurred for additional training required by this proposed standard cannot be accurately determined; however,

an advisory committee convened to review and comment on this proposal indicated that they anticipated that additional costs for training would be more than offset by savings resulting from reduced workers compensation and liability insurance costs.

Cost Impact on Private Persons or Businesses

The proposed standard may result in a small increase in training costs in order for employers to properly train their employees in accordance with the training requirements of Section 1704(f). Employers are already required to conduct periodic training and toolbox or tailgate safety meetings as required by CSO 1509 and GISO 3203 (Injury and Illness Prevention Training Programs), and the proposed training standards can easily be incorporated into those training elements. The advisory committee that assisted in developing this proposal estimated that any training costs would be more than offset by anticipated savings deriving from reduced workers compensation and liability insurance costs.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the standard does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard(s).

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses; however, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.